

## § 963.18

proposed conclusion shall be stated separately.

[52 FR 18912, May 20, 1987; 52 FR 20599, June 2, 1987]

### § 963.18 Initial decision.

Unless given orally at the conclusion of the hearing, the presiding officer shall render an initial decision as expeditiously as practicable following the conclusion of the hearing and the receipt of the proposed findings and conclusions, if any. The initial decision becomes the final agency decision if a timely appeal is not taken.

### § 963.19 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after the receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues de novo.

### § 963.20 Final agency decision.

The Judicial Officer, or by delegation the Associate Judicial Officer, renders the final agency decision which will be served upon the parties. If the decision is that the Postal Service's prohibitory order was violated, the Recorder shall provide a certified copy of the record to the General Counsel for use in seeking court enforcement of the order.

### § 963.21 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

### § 963.22 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[52 FR 18912, May 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

## 39 CFR Ch. I (7–1–06 Edition)

## PART 964—RULES OF PRACTICE GOVERNING DISPOSITION OF MAIL WITHHELD FROM DELIVERY PURSUANT TO 39 U.S.C. 3003, 3004

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AUTHORITY: 39 U.S.C. 204, 401, 3003, 3004.

SOURCE: 52 FR 36763, Oct. 1, 1987, unless otherwise noted.

### § 964.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the United States Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 224.1(c)(4)).

[52 FR 36763, Oct. 1, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

### § 964.2 Scope of rules.

The rules in this part provide for administrative review of cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3003(a), has withheld from delivery mail which he believes is involved in a scheme described in section 3003(a), and cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3004, determines that letters or parcels sent in the mail are addressed to places not the residence or



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regular business address of the person for whom they are intended to enable the person to escape identification.

[52 FR 36763, Oct. 1, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

### § 964.3 Customer petitions; notice of hearing; answer; summary judgment.

(a) *Petition.* Any addressee who receives notice from the Chief Postal Inspector or his delegate that his mail has been withheld pursuant to 39 U.S.C. 3003(a) or 3004 may oppose such action by filing with the Judicial Officer a written Petition stating the reasons for his or her opposition. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078. The Petition must be postmarked within 14 days of the date upon which the Petitioner received the notice. The failure of an addressee who has received notice of withheld mail to file a Petition opposing such action with the Judicial Officer shall constitute a waiver of hearing and further procedural steps by the addressee. The General Counsel of the Postal Service shall thereupon file the matter with the Judicial Officer for issuance of a final order pursuant to § 964.19. Such referral shall contain a statement of the basis for the detention, evidence that the notice of the detention and the addressee's right to petition for review under this part were served on the addressee in person or by mailing a copy to the address to which the detained mail is directed, the date of such service, and a copy of the proposed order sought by the General Counsel.

(b) *Notice of hearing.* On receipt of the Petition, the Recorder shall schedule a hearing on a date not later than 28 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel of the Postal Service shall file an Answer to the Petition within 10 days of re-

ceipt of the Petition from the Recorder.

(d) *Summary judgment.* Upon motion of either the General Counsel or the Petitioner, or upon his own initiative, the presiding officer may find that the Petition and Answer present no material issues of fact requiring an evidentiary hearing and thereupon may render an initial decision granting or dismissing the Petition. The initial decision shall become the final agency decision if a timely appeal is not taken pursuant to § 964.16 of this part.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988; 63 FR 66053, Dec. 1, 1998]

### § 964.4 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078, or other locations designated by the presiding officer. Not later than 10 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify; and

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered

[52 FR 36763, Oct. 1, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

### § 964.5 Election as to hearing.

If both parties elect, they may waive an oral hearing and submit the matter for decision on the basis of the Petition and Answer, subject to the authority of the presiding officer to require the parties to furnish such further evidence or such briefs as necessary. The request to waive oral hearing should be filed not later than 10 days prior to the date set for hearing.

### § 964.6 Default.

If a Petitioner fails to appear at the hearing without notice or without adequate cause the presiding officer may